

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

HEREDITARY CHIEF WILBUR
SLOCKISH, a resident of Washington,
and an enrolled member of the
Confederated Tribes and Bands of
the Yakama Nation, et al.,

No. 3:08-cv-01169-YY

ORDER

Plaintiffs,

v.

UNITED STATES FEDERAL
HIGHWAY ADMINISTRATION,
an Agency of the Federal
Government, et al.,

Defendants.

HERNÁNDEZ, District Judge:

Magistrate Judge Youlee Yim You issued a Findings and Recommendation on April 1, 2020, in which she recommends that this Court grant Defendants' motion for relief from LR 56-1(B) and to strike extra-record materials, grant Defendants' motion for summary judgment, and

deny Plaintiffs' motion for summary judgment. F&R 82, ECF 348. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Plaintiff filed timely objections to the Magistrate Judge's Findings & Recommendation. Pl. Obj., ECF 350. When any party objects to any portion of the Magistrate Judge's Findings & Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

Plaintiffs object to the Magistrate Judge's conclusion that the doctrine of laches bars Plaintiffs' claims under the National Environmental Policy Act ("NEPA"), the National Historic Preservation Act ("NHPA"), the Federal Land Policy and Management Act ("FLPMA"), and the Department of Transportation Act ("DTA"). First, Plaintiff argues that Defendants waived the defense of laches by failing to plead it in their answer. Pl. Obj. 11. The Court need not address this question because the doctrine of laches does not apply. The Supreme Court has held that the doctrine of laches does not bar a suit filed within an applicable federal statute of limitations. *SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 137 S. Ct. 954, 960 (2017) (reasoning that "applying laches within a limitations period specified by Congress would give judges a 'legislation-overriding' role that is beyond the Judiciary's power"). As a result, the Court declines to adopt Magistrate Judge You's finding that laches bars Plaintiffs' claims.

The Court has carefully considered Plaintiffs' other objections and concludes that there is no basis to modify the remainder of the Findings & Recommendation. The Court has also reviewed the pertinent portions of the record *de novo* and finds no error in the remainder of the Magistrate Judge's Findings & Recommendation.

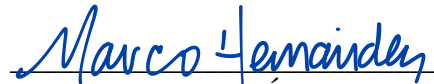
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CONCLUSION

The Court ADOPTS IN PART Magistrate Judge You's Findings and Recommendations [348]. The Court DECLINES TO ADOPT Magistrate Judge You's finding that Plaintiffs' NEPA, NHPA, FLPMA, and DTA claims are barred by the doctrine of laches. The Court ADOPTS the remainder of Judge You's Findings and Recommendations. Defendants' Motion to Strike Extra-Record Materials [339] is GRANTED. Plaintiffs' Motion for Summary Judgment [331] is DENIED. Defendants' Cross Motion for Summary Judgment [340] is GRANTED. Accordingly, this case is dismissed with prejudice.

IT IS SO ORDERED.

DATED: February 21, 2021.


MARCO A. HERNÁNDEZ
United States District Judge